

Homebuilding market study

Annexe I - Regulation affecting the industry

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I.1 REGULATION¹ AFFECTING THE INDUSTRY

Planning permission

- I.1.1 The planning guidance is set separately for each country in the UK. National policy is set by national government.
- I.1.2 In England CLG² set national planning policy. Housing policy is outlined in *Planning Policy Statement 3: Housing* (PPS3).³
- I.1.3 In Wales national planning policy guidance is set by the Welsh Assembly Government⁴ and is contained in *Planning Policy Wales* (PPW).⁵
- I.1.4 The Scottish Government⁶ planning guidance is contained in the *National Planning Framework for Scotland* (NPF)⁷ which is the long-term strategy covering the next 25 years. There are also Scottish Planning Policy Statements - the relevant one for housing is *Scottish Planning Policy Statement 3: Planning for Homes* (SPP3).⁸
- I.1.5 In Northern Ireland the Department of Environment is responsible for the preparation of Planning Policy Statements (PPS) within the context of the Regional Development Strategy (RDS) for Northern Ireland which sets the long term strategy for the development of the region to 2025. Planning policy aimed at promoting and managing the sustainable growth and distribution of housing is contained in *Planning Policy Statement 12*

¹ We are not using the word 'regulation' in the strictest sense in this Annexe. Here we take it to mean any governmental, administrative or public formal or informal intervention which affects the homebuilding industry. This includes but is not limited to standards such as the Code for Sustainable Homes.

² www.communities.gov.uk

³ www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement3.pdf

⁴ new.wales.gov.uk/?lang=en

⁵ new.wales.gov.uk/desh/publications/planning/ppw/ppw2002e.pdf?lang=en

⁶ www.scotland.gov.uk/Home

⁷ www.scotland.gov.uk/Publications/2004/04/19170/35317

⁸ www.scotland.gov.uk/Resource/Doc/233260/0063937.pdf

*(PPS 12): Housing in Settlements.*⁹ Planning policy aimed to secure quality in new housing developments is contained in *Planning Policy Statement 7 (PPS 7): Quality Residential Environments.*¹⁰

- I.1.6 In England, Wales and Scotland national planning policy and guidance is interpreted and implemented by local government through its development plan making functions and decision making on individual applications.¹¹ In Northern Ireland, planning policy is implemented by the Planning Service¹² (an agency within the Department of the Environment) in preparing development plans and in the determination of individual planning applications.¹³
- I.1.7 Planning policy documents at a national and local level provide guidance for a myriad of specifications relating to the construction of new buildings, including homes. For example *PPS3: Housing* contains guidance about target densities, saying that an indicative minimum should be about 30 units a hectare. At a local level, policy may be more specific and can include a target for the number of new homes (including affordable housing),¹⁴ details about the number of parking spaces,¹⁵ requirements for the use of local renewable and low-carbon energy in

⁹ www.planningni.gov.uk/AreaPlans_Policy/PPS/pps12/drd-pps12.pdf

¹⁰ [www.planningni.gov.uk/AreaPlans_Policy/PPS/pps7/\[s07_master.pdf](http://www.planningni.gov.uk/AreaPlans_Policy/PPS/pps7/[s07_master.pdf)

¹¹ Depending on country, these local development plans can take the form of regional spatial strategies, local development frameworks, unitary development frameworks or regional development strategies.

¹² www.planningni.gov.uk/default.htm

¹³ The administration of the planning system in Northern Ireland will be amended by the planned implementation of the Review of Public Administration.

¹⁴ In Northern Ireland the requirement for affordable housing applies to social housing only and not any shared ownership schemes.

¹⁵ For example in the draft Glasgow City Plan on p98 'The basic minimum standard for parking provision is: 1 allocated (unallocated if on-street) space per dwelling unit for residents; and an additional 0.25 unallocated spaces per dwelling unit for visitors.'

www.glasgow.gov.uk/NR/rdonlyres/F4F70198-78D2-47EF-9B97-8FC9EE5E13C5/0/part3transport.pdf

new developments¹⁶ as well as a range of other issues specific to the locality.

The Merton Rule

- I.1.8 The Merton Rule refers to the planning policy in England and Wales which requires the use of renewable energy onsite to reduce carbon dioxide emissions. It is known as the Merton Rule because it was introduced by the London Borough of Merton. It has government support and influenced the development of *Planning Policy Statement: Planning and Climate Change - Supplement to Planning Policy Statement 1*.¹⁷
- I.1.9 The Merton Rule is one example of different requirements for planning permission in different local planning authorities. Because not all LPAs insist on the use of onsite renewable energy generation the Merton Rule creates an inconsistency between different LPAs.

Conditions attached to planning permission

- I.1.10 When planning permission is granted to build a new home it is often done with certain conditions attached. In England and Wales, sections 70 and 72 of the Town and Country Planning Act 1990 allow local planning authorities to grant planning permission with conditions attached. In Scotland similar provision is made in sections 37 and 41 of Town and Country Planning (Scotland) Act 1997 and in Northern Ireland articles 25 and 27 of the Planning (Northern Ireland) Order 1991 allows this.
- I.1.11 In England and Wales agreements can be reached between the builder and the local planning authority by which the builder must fulfil certain obligations under section 106 of the Town and Country Planning Act

¹⁶ Paragraph 26 – 29 and 33 of the new supplement to *PPS1: Delivering Sustainable Development*. Available at:
www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/planningpolicystatements/planningpolicystatements/ppscclimatechange/

¹⁷ www.communities.gov.uk/documents/planningandbuilding/pdf/ppscclimatechange.pdf

1990.¹⁸ In Scotland similar provision can be found in section 75 of the Town and Country Planning (Scotland) Act 1997.¹⁹ Whilst in Northern Ireland similar provision can be found in article 40 of the Planning (Northern Ireland) Order 1991.²⁰ Currently article 40 of the Planning (Northern Ireland) Order 1991 is rarely used In Northern Ireland. However, that is not to say it will not be used more in the future, once the current planning review being undertaken by the Department of Environment and Planning Service of Northern Ireland is completed

- I.1.12 In particular, the provision of a certain proportion of affordable housing is one of the conditions often attached to the granting of planning permission in Great Britain, for example the planning approval may require 30 per cent of the homes to be 'affordable'.²¹ There is currently no such requirement in place in Northern Ireland.
- I.1.13 These provisions are not only used by LPAs (in Great Britain) to obtain affordable housing but are also used to provide other community infrastructure, such as a new children's playground. They can also be used to secure the donation of a sum of money from the homebuilder. Any money that is paid can be used towards improving existing or providing new community infrastructure. For example, it can be used for the maintenance of open spaces.
- I.1.14 In addition to planning permission, homebuilders often need to carry out works on roads that are near or within new home developments. In England and Wales, sections 38 and 278 of the Highways Act 1980

¹⁸ www.opsi.gov.uk/acts/acts1990/UKpga_19900008_en_1.htm

¹⁹ www.opsi.gov.uk/acts/acts1997/ukpga_19970008_en_1

²⁰ www.opsi.gov.uk/si/si1991/Uksi_19911220_en_1.htm

²¹ For example this 35 per cent target applies in Breckland, Norfolk. See www.breckland.gov.uk/housingfinance#30target for more details.

allow homebuilders to obtain the agreement of the relevant highway authority²² in this regard.

- I.1.15 In England and Wales section 38 of the Highways Act 1980 provides for the homebuilder to make an agreement with the relevant highway authority, via which the authority will adopt a road the homebuilder has built. On adoption the road will be maintained at public expense. Prior to adoption the homebuilder is usually required to maintain the road at its own expense for at least 12 months. Most section 38 agreements concern new roads. They will often be part of a legal package, which can include planning permission and a section 278 agreement (see paragraph I.1.20).
- I.1.16 In Scotland, comparable provision can be found in sections 16, 18 and 21 of the Roads (Scotland) Act 1984. Section 16 allows a homebuilder which has constructed a private road to apply to the local roads authority²³ for the road to be added to the authority's list of public roads. Section 18 gives the local roads authority the power to take over the control and maintenance of footpaths associated with a development by agreement with homebuilders. Section 21 provides that a homebuilder must obtain a construction consent agreement from a local roads authority before building a new road. Section 22 states that failure to do so is a criminal offence.
- I.1.17 In Northern Ireland the Private Streets (NI) Order 1980 and the Private Streets (Amendment) Order 1992 provide the statutory basis for the adoption of roads constructed by developers.
- I.1.18 Where a planning application appears to require the laying-out or construction of streets, Article 3 of The Private Streets (NI) Order 1980

²² The relevant highway authority would be the Transport Minister for trunk roads and special roads or the local highway authority (for example the county council or if the road is in London Transport for London). See section 1 of the Highways Act 1980 which defines highway authority.

²³ Section 151 of the Roads (Scotland) Act 1984 defines a local road authority as a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 within whose area the road is.

requires the Department to determine the width, position and arrangement of the streets.

- I.1.19 The Order further provides for the Department (Roads Service) to adopt the determined layout on satisfactory completion by the developer. Developers are required to enter into an agreement with the Department so that, on satisfactory completion of the road construction, the roads become public roads. The agreement is normally provided under Article 32 of the Order.
- I.1.20 In England and Wales section 278 of the Highways Act 1980²⁴ provides for a homebuilder to pay for improvements to existing roads or the building of new ones. The works can be carried out by the relevant highway authority, although the homebuilder is often authorised to do the works itself.²⁵ A section 278 agreement is not a contract for the homebuilder to complete the work. The agreement is solely financial in that the road works are carried out at the homebuilder's expense. This will usually cover trunk roads, special roads, roundabouts or road junctions. For example, an agreement with a highway authority under s278 could be for the homebuilder to provide a new roundabout. However, on larger sites it may be necessary to construct a new road through a new home development. This would usually be covered under the terms of the planning permission that is granted by the local authority for that development. In that instance, the homebuilder would be responsible for constructing the road to a certain set of specifications. If the homebuilder is unable to complete the works because, for example, it becomes insolvent the local highway authority will do so, using the remaining funds paid under the agreement by the homebuilder.

²⁴ As amended by section 23 of the New Roads and Street Works Act 1991.

²⁵ The relevant highway authority would be the Transport Minister for trunk roads and special roads or the local highway authority (for example the county council or if the road is in London Transport for London). See section 1 of the Highways Act 1980 which defines highway authority.

- I.1.21 In Scotland similar provision can be found in section 48 of the Roads (Scotland) Act 1984 and in Northern Ireland article 122 of the Roads (Northern Ireland) Order 1993 No. 3160 (N.I.15).
- I.1.22 In practice section 48 is very rarely used in Scotland. In most cases where installation or upgrading of roads is required the arrangements would be part of the section 75 agreement.
- I.1.23 In Northern Ireland the Roads (Northern Ireland) Order 1993 is used for larger road building projects. However, article 40 (of the Planning (Northern Ireland) Order 1991) can be used to provide or upgrade existing roads. Where development necessitates the provision or upgrading of off-site highways this is secured under article 122 of the Roads (Northern Ireland) Order 1993, not article 40 of the Planning (Northern Ireland) Order 1991.
- I.1.24 Building Regulations and building control
- I.1.25 In addition to requirements surrounding the type and tenure of a development, there are also regulations which influence the construction of new homes.
- I.1.26 There are three sets of building laws for England and Wales, Scotland and Northern Ireland respectively.²⁶ All three sets of laws are primarily concerned with ensuring that minimum building standards are met. Building control is the process whereby plans and construction work are assessed and inspected against the requirements of building regulations.
- I.1.27 Although there are three separate building control systems in operation in the UK, each charged with ensuring compliance and enforcement of

²⁶ In England and Wales the primary legislation is The Building Act 1984 (as amended), the Building Regulations 2000 (as amended) and the Building (Approved Inspectors etc.) Regulations 2000 (as amended). In Scotland it is Building (Scotland) Act 2003 and the Building (Scotland) Regulations 2004 and in Northern Ireland the Building Regulations (Northern Ireland) Order 1979 as amended by the Planning and Building Regulations (Amendment) (Northern Ireland) 1990 and the Building Regulations (Northern Ireland) 2000 (as amended).

three separate sets of regulations, the primary purpose of building regulations does not differ between the constituent countries of the UK. The primary purpose of all three systems is to ensure the health and safety of people. All the jurisdictions also deal with issues such as welfare and convenience of people (such as access to and use of buildings), energy efficiency, water conservation and sustainable development.

- I.1.28 Historically, building control could only be provided by local authorities, but there was deregulation in England and Wales in 1984²⁷ allowing building work to be supervised by individuals and companies in the private sector known as Approved Inspectors. Between 1985 and 2005 the only Approved Inspector authorised to carry out the building control function on new homes was the National House Building Council (NHBC). Following further deregulation, homebuilders in England and Wales can now choose to use local building control officers through local authorities to inspect their work or choose from the approximately 65 corporate and individual Approved Inspectors who operate under a set of regulations called the Building (Approved Inspectors etc.) Regulations 2000.²⁸
- I.1.29 In Scotland and Northern Ireland building control has not been deregulated and is still conducted by local authorities. In Scotland, the Building (Scotland) Act 2003 does provide for a variety of 'verifiers'.²⁹ At present the only appointed verifiers are the 32 Scottish local authorities, each covering their own geographical area. This appointment is for a period of six years until 2011.

²⁷ Part 2 of the Building Act 1984 entitled 'Supervision of Building Work etc otherwise than by local authorities'.

²⁸ Authorised Inspectors also operate under the Building Act and the Building Regulations.

²⁹ Verifiers assess applications for building warrants and carry out inspections during the construction process to help the local authority determine whether the building is being constructed in accordance with the warrant.

Code for Sustainable Homes³⁰

- I.1.30 The Code for Sustainable Homes³¹ was launched in December 2006 and it became mandatory in England for all homes to have a code rating on 1 May 2008. The Code replaces the EcoHomes³² scheme in England.³³ The Code is based on a rating from 1 to 6 which corresponds with the overall sustainable performance of the home. Code Level 6, also known as Zero Carbon, is the highest rating available.³⁴
- I.1.31 The Code's requirements are divided into nine criteria: energy and carbon dioxide emissions, water, materials, surface water run-off, waste, pollution, health and well-being, management and ecology.
- I.1.32 As of April 2008 all new social housing must be built to a minimum of Code Level 3 but it remains voluntary for private housing.³⁵
- I.1.33 In England the official Government target is for all new homes to be built to comply with the energy component of Code Level 3 from 2010, Code Level 4 in 2013 and Code Level 6 in 2016.³⁶ There are no official targets for compliance with the Code in its entirety.

³⁰ This is technically a standard.

³¹ www.communities.gov.uk/thecode

³² www.bre.co.uk/page.jsp?id=397

³³ EcoHomes and EcoHomes XB will continue to be used to assess refurbished and existing homes in England. An EcoHomes rating of 'very good' is broadly equivalent to Code Level 3 www.bsria.co.uk/press/?press=302

³⁴ It is also worth noting the provisions of Directive 2002/91/EC of the European Parliament and Council, on the energy performance of buildings which came into force on 4 January 2003 with a view to increasing the energy efficiency of buildings (including new homes) across the EC by setting minimum energy performance requirements for all newly constructed buildings. This directive is likely to be recast in 2009 (see http://ec.europa.eu/energy/demand/consultations/doc/2008_public_consultation_buildings_background_en.pdf).

³⁵ www.communities.gov.uk/documents/planningandbuilding/pdf/803784.pdf

³⁶ Table 21, p77, NHBC Foundation, 2008, *Zero Carbon: what does it mean to homeowners and housebuilders?*

- I.1.34 The Code has been adopted in Wales and currently applies to new housing promoted or supported by the Welsh Assembly Government or Assembly Government Sponsored Bodies (AGSB).³⁷ From April 2008 all new housing funded by a Social Housing Grant has been required to comply with Code Level 3. The aim is to move to Code Level 4 and 5 'as soon as possible'.³⁸
- I.1.35 The Welsh Assembly Government is currently consulting on proposals to require all residential developments of more than 10 homes to be build to Code Level 3 from 1 April 2009.³⁹ It is an aspiration of the Welsh Assembly Government for all homes built in Wales from 2011 to be 'carbon neutral'.⁴⁰
- I.1.36 In Northern Ireland, from 2 June 2008, all new self-contained social housing schemes must be Code Level 3 or higher. Measurement against EcoHomes 'very good' standard is acceptable for a limited time period if a scheme has already been assessed or is at an advanced stage of being assessed using EcoHomes standards. If the Code does not apply to a build scheme, the scheme should have an EcoHomes 2006, or an approved equivalent, rating of 'very good' or better. Major rehabilitation or improvement schemes should meet EcoHomes 2006 rating level 'good' or better.
- I.1.37 The Code for Sustainable Homes does not apply in Scotland. In 2007 *A low carbon building standards strategy for Scotland*⁴¹ was published; this

³⁷ new.wales.gov.uk/topics/sustainabledevelopment/design/code/?lang=en

³⁸ Paragraph 3.2.3, p7, Welsh Assembly Government, 2008, *Consultation paper: Further consultation on planning for climate change*. Available at: www.rics.org/NR/rdonlyres/77D13211-4772-4117-A4E2-10D3COEA2D50/0/PlanningforClimateChangeconsultationdoc.doc

³⁹ Box 2, Welsh Assembly Government, 2008, *Consultation paper: Further consultation on planning for climate change*.

⁴⁰ www.walesonline.co.uk/news/politics-news/2008/04/17/wales-eco-targets-impact-on-affordable-homes-91466-20776051/

⁴¹ www.sbsa.gov.uk/pdfs/Low_Carbon_Building_Standards_Strategy_For_Scotland.pdf?bcsi_scan_A2018E0826464712=0&bcsi_scan_filename=Low_Carbon_Building_Standards_Strategy_For_Scotland.pdf

is more commonly known as the Sullivan report. This report made 56 recommendations for targets which would increase energy efficiency and reduce carbon emissions. Most of the recommendations fall under the remit of the Building Standards Division of the Scottish Government (BSD).⁴² The recommendations include: new energy standards in 2010 and 2013 to reduce carbon emissions from new buildings; if practical, an aim of net zero carbon emissions for space heating, hot water, lighting and ventilation within 10 years and an aim of total-life zero carbon buildings by 2030.

- I.1.38 The BSD is currently considering these recommendations and new regulations will be introduced in 2010. There is likely to be a consultation period about any proposed changes sometime in 2009. Work has been carried out estimating the cost of a 30 per cent and 60 per cent reduction in carbon dioxide emissions.⁴³
- I.1.39 The Code for Sustainable Homes builds on the EcoHomes system. The Code has an increased focus on sustainability of design. 'Lifetime Homes' is part of the Code for Sustainable Homes.

Lifetime Homes

- I.1.40 The aim of Lifetime Homes⁴⁴ is to build homes which incorporate 16 design features with the purpose of making the home adaptable to the changing circumstances of individuals over time.
- I.1.41 The 16 design criteria cover: car parking width, access from car parking, approach gradients, entrances, communal stairs and lifts, doorways and hallways, wheelchair accessibility, living room, entrance level bedspace, entrance level WC and shower drainage, bathroom and WC walls, stair

⁴² Which used to be called the Scottish Building Standards Agency www.sbsa.gov.uk/index.htm

⁴³ Scottish Government Social Research, 2008, Cost impact analysis for low carbon and EcoHomes standard housing using lifecycle homes costing methodology, by Davis Langdon LLP. Available at: www.scotland.gov.uk/Resource/Doc/234359/0064168.pdf

⁴⁴ www.lifetimehomes.org.uk

lift/through-floor lift, tracking hoist route, bathroom layout, window specification and controls, fixtures and fittings.

- I.1.42 The Lifetime Homes standard is already a requirement for many in new developments.⁴⁵ The national target is for all public sector funded housing in England to be built to the Lifetime Homes standard from 2011 (it is a requirement now in Wales and Northern Ireland⁴⁶), with an aspiration of 2013 for all private sector dwellings. A review will be undertaken in 2010 across all sectors. In Scotland, changes to building standards in 2007 introduced elements similar to many of the Lifetime Homes standards into mandatory building standards for all new buildings. In Scotland, some LPAs have supplementary planning guidance promoting or requiring the delivery of new homes to Lifetime Homes, or a similar standard, and for a percentage of wheelchair accessible homes.⁴⁷
- I.1.43 The Lifetime Homes standards can be included in the assessment of compliance with the Code for Sustainable Homes; at the moment the Lifetime Homes standards are mandatory at Code Level 6 in England. To increase the adoption of the Lifetime Homes standards they will become mandatory at lower Code Levels in the future. From 2010 they will be mandatory at Code Level 4 and in 2013 at Code Level 3.⁴⁸

Community Infrastructure Levy

- I.1.44 The Community Infrastructure Levy (CIL) is a new charge which will allow local authorities in England and Wales to charge on most types of new development in their area. Whether or not to charge the CIL will be at the discretion of the particular LPA.

⁴⁵ For example in the London Plan www.london.gov.uk/mayor/housing/strategy/index.jsp

⁴⁶ In Northern Ireland the Housing Association Guide requires new social housing (self-contained bungalows, ground floor flats, flats served by lift and two and three-storey houses), acquired using traditional procurement methodology, to be designed to the Lifetime Homes standard.

⁴⁷ For example, in Edinburgh the city council requires 10 per cent of new social housing to be wheelchair accessible. www.ownershipoptions.org.uk/homestake/html/News/HE0107.php

⁴⁸ www.communities.gov.uk/documents/planningandbuilding/pdf/803784.pdf

- I.1.45 CIL charges will be based on simple formulae and are designed to decrease the uncertainty which homebuilders currently face. The proceeds of the CIL will be spent on local and sub-regional infrastructure to support the development of the area.
- I.1.46 Currently, it is proposed that the CIL will continue alongside section 106 of the Town and Country Planning Act 1990 agreements (so-called planning obligations) when the CIL is introduced. In particular, section 106 will still be used to obtain affordable housing.⁴⁹ No decision has been made about whether restrictions will be imposed on the use of planning obligations after the introduction of CIL. If the Government does decide to restrict planning obligations there will be a transitional period before the restriction takes effect.
- I.1.47 Some research suggests that the number of section 106 type agreements may fall anyway after CIL is introduced.⁵⁰
- I.1.48 Provision for the CIL is contained in the Planning Bill⁵¹ which is currently before Parliament. It is expected that the CIL will come into force in spring 2009.⁵²
- I.1.49 In Scotland the government has decided to 'postpone the fundamental review of the system of system of developer contributions in Scotland, to avoid placing new burdens on development at this time.'⁵³ The Scottish Government is revising and updating existing planning guidance (circular 12/96) to ensure that planning agreements are taken forward in as transparent, consistent and efficient a manner as possible and will consult on a new planning circular by the end of the year.

⁴⁹ Paragraph 19, p6 CLG, 2008, *The Community Infrastructure Levy*. Available at: www.communities.gov.uk/documents/planningandbuilding/pdf/communityinfrastructurelevy.pdf

⁵⁰ p4, Town and Country Planning Association, 2008, *Planning Community Needs*. Available at: www.tcpa.org.uk/downloads/20080724-Planning_Community_Needs-summary1.pdf

⁵¹ www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/planningbill/

⁵² Paragraph 6.2, p80, CLG, 2008, *The Community Infrastructure Levy*.

⁵³ www.scotland.gov.uk/News/Releases/2008/08/19154002